

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STARR INDEMNITY & LIABILITY  
COMPANY,

Plaintiff,

v.

AMGUARD INSURANCE COMPANY,  
Defendant.

AND RELATED CROSS-ACTION

Case No. [20-cv-00959-SI](#)

**ORDER OVERRULING OBJECTION  
AND ADOPTING SPECIAL MASTER'S  
ORDER**

Re: Dkt. Nos. 118, 121

Defendant AmGUARD Insurance Company has filed an objection to portions of the Special Master's January 24, 2022 order. The Court directed Starr to file a response to AmGUARD's objection, and Starr filed its response on February 23, 2022.

AmGUARD takes issue with (1) the denial of AmGUARD's request for production of portions of plaintiff Starr Indemnity and Liability Company's claim file relating to the underlying *Duncan* and *Smythe* lawsuits, as well as communications about the Starr policy between Kihagi and her personal/coverage counsel and Starr, and (2) the denial of AmGUARD's request for complete copies of the defense fees and costs incurred in the *Duncan* lawsuits.

The Court reviews the Special Master's findings of fact for clear error. *See* Order Appointing Martin Quinn As Special Master To Oversee Discovery. Dkt. No. 116, ¶ 16. "Clear error is deferential . . . requiring a definite and firm conviction that a mistake has been made."

1 *Husain v. Olympic Airways*, 316 F.3d 829, 835 (9th Cir. 2002) (internal quotes and cites omitted;  
 2 emphasis added throughout unless otherwise indicated). If the findings are “plausible, in light of  
 3 the record viewed in its entirety, the [reviewing] court cannot reverse even if it is convinced it would  
 4 have found differently.” *Id.* The Special Master’s conclusions of law are reviewed *de novo*. See  
 5 Order Appointing Martin Quinn As Special Master To Oversee Discovery. Dkt. No. 116, ¶ 16.  
 6 “However, if the application of the law to the facts requires an inquiry that is ‘essentially factual,’  
 7 review is for clear error.” *Husain*, 316 F.3d at 835.

8 The Court finds no legal or factual error in the Special Master’s analysis. Regarding Starr’s  
 9 claim file, the Special Master found that while he “might agree that the Starr claim file material . . .  
 10 is relevant at least on the *Duncan* case, AmGUARD provides no basis for obtaining what are clearly  
 11 privileged communications.” Dkt. No. 118 at 4 (citing *Bank of America, N.A. v. Superior Court*,  
 12 109 Cal. App. 4th 529, 535 (2003), and *Lectrolarm Custom Sys., Inc. v. Pelco Sales, Inc.*, 212 F.R.D.  
 13 567, 571 (E.D. Cal. 2002)). Special Master Quinn also found that while there was no issue of  
 14 privilege as to communications about the Starr policy between Kihagi and her personal/coverage  
 15 counsel and Starr, “there is a serious issue of relevance.” Dkt. No. 118 at 4. Mr. Quinn found,  
 16 “AmGUARD’s coverage dispute with its insureds will turn on the provisions of AmGUARD’s  
 17 policies, evidence concerning the truthfulness of the insureds’ representations on the policy  
 18 applications, and evidence of what AmGUARD knew and when it knew it as to the *Smythe/Duncan*  
 19 lawsuits. Communication about Starr’s coverage dispute with its insureds is of little to no  
 20 relevance.” *Id.* at 4-5.

21 In addition, the Court notes that AmGUARD has apparently already subpoenaed many of  
 22 these documents from the Kihagi parties and from their defense and coverage counsel, and Starr has  
 23 already produced non-privileged portions of its claim file such as its coverage position letters and  
 24 its policy. Further, while AmGUARD argues that it needs claim file documents regarding settlement  
 25 negotiations to show prejudice, AmGUARD’s own filings demonstrate that it has already obtained  
 26 discovery about settlement offers through discovery.

27 As to the billing records, the Special Master noted that Starr had produced copies of defense  
 28 counsel’s bills with the task descriptions entirely redacted. Citing *Los Angeles Bd. of Supervisors*

1 v. *Superior Court*, 2 Cal.5th 282 (2016), Mr. Quinn correctly held that under California law, attorney  
2 fee statements, including task descriptions, in active or pending litigation – such as the *Duncan*  
3 lawsuit -- are privileged, while attorney bills in settled matters – such as the *Smyth* lawsuit – are not.  
4 Dkt. No. 118 at 5.

5 Accordingly, AmGUARD's objection is OVERRULED.

6  
7 **IT IS SO ORDERED.**

8  
9 Dated: February 28, 2022



---

SUSAN ILLSTON  
United States District Judge